



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XB816

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries;

Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that a proposed exempted fishing permit contains all of the required information and warrants further consideration. This exempted fishing permit would allow Atlantic herring vessels to use electronic monitoring, coupled with portside sampling, in lieu of at-sea monitoring to satisfy their industry-funded monitoring requirements during 2022. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed exempted fishing permits.

DATES: Comments must be received on or before [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit written comments by the following method:

- *Email:* nmfs.gar.efp@noaa.gov. Include in the subject line "HERRING EM EFP."

FOR FURTHER INFORMATION CONTACT: Maria Fenton, Fishery Management Specialist, 978-281-9196.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council took final action on the New England Industry-Funded Monitoring (IFM) Omnibus Amendment in 2018 and recommended a 50-percent coverage target for at-sea monitoring (ASM) coverage aboard vessels issued a Category A or B herring permit. This 50-percent coverage target includes a combination of Standardized Bycatch Reporting Methodology (SBRM) and IFM coverage. IFM coverage requirements may be waived on a trip-by-trip basis if monitoring coverage is unavailable, if vessels intend to land less than 50 mt of herring, or if vessels carry no fish on pair trawling trips (*i.e.*, wing vessels). The IFM Amendment also included a provision allowing midwater trawl vessels to purchase observer coverage in order to fish in Groundfish Closed Areas (GCA).

The Council reviewed the results from a midwater trawl electronic monitoring (EM) pilot study and concluded that a combination of EM and portside sampling was an appropriate substitute for ASM aboard midwater trawl vessels. However, rather than including EM and portside requirements in the IFM Amendment, the Council recommended that NMFS administer EM and portside sampling via an exempted fishing permit (EFP) for midwater trawl vessels during the first 2 years of IFM in the herring fishery. The Council is required to evaluate the effectiveness of the herring IFM program 2 years after implementation of the amendment. In July 2021, NMFS issued an EFP authorizing six herring vessels to use EM and portside sampling in lieu of ASM to satisfy their IFM requirements during the first year of IFM in the herring fishery. The issuance of this 2022 EFP would cover the second year of IFM in the herring fishery. The Council would consider lessons learned through the 2021 and 2022 EFPs when reviewing herring IFM requirements and considering how to most effectively and efficiently administer an EM and portside sampling program for the herring fishery.

Herring fishing effort has been limited in IFM year 2021 due to low annual catch limits (ACL). As of February 15, 2022, participating vessels completed 27 trips under the 2021 EFP:

- Eight trips were selected for IFM coverage. Coverage waivers were issued for seven of these trips, and one was portside sampled;
- One GCA trip was taken, and that trip was portside sampled; and
- Twelve trips were eligible for EM video review (i.e., there was fishing effort).

Video review had been completed for 11 of these trips.

Findings from the voluntary EM study, as well as analyses in the Environmental Assessment for the IFM Amendment, suggest that EM and portside sampling may be a more cost-effective monitoring option than at-sea monitors or observers for the herring fishery. Developing another permanent monitoring option for the herring fishery would give herring vessels additional flexibility to select the most cost-effective monitoring option for their fishing operations, which would help mitigate the negative economic impacts of recent reductions to herring ACLs. Additionally, information gathered through this EFP would also help further evaluate the utility of EM and portside sampling to monitor fishing in GCAs, and to monitor herring vessels fishing with purse seine or bottom trawl gear.

Project Description

The project period for this EFP would cover IFM year 2022 (April 1, 2022 – March 31, 2023), contingent upon availability of funds. Under this EFP, up to 21 vessels holding Category A or B herring permits would be required to run EM systems (video cameras and gear sensors) on 100 percent of declared herring trips, except under the following circumstance: If a vessel using midwater trawl gear intends to operate as a wing vessel on a trip (meaning it will pair trawl with another midwater trawl vessel but will not pump or carry any fish onboard), and NMFS issues the wing vessel a waiver

from IFM requirements for that trip, the wing vessel does not need to run its EM system during that trip. Declared herring trips include any trips declared using the herring (HER) plan code, or any trips where the vessel indicates that it is retaining herring when participating in the Atlantic mackerel (*e.g.*, mackerel trip with herring retention (MAH), mackerel trip with herring and squid retention (MHS)) or the squid fishery (*e.g.*, longfin squid trip with herring retention (SLH), longfin squid trip with herring and mackerel retention (LHM), *Illex* squid trip with herring retention (SIH), *Illex* squid trip with herring and mackerel retention (IHM)).

The purpose of EM is to confirm catch retention and verify compliance with slippage restrictions. Participating vessels would be required to run EM systems regardless of whether they are carrying an SBRM observer on trips that are selected for SBRM coverage. Participating vessels would be required to adhere to all normal reporting requirements, except as exempted through this EFP. Participating vessels would be required to adhere to individual Vessel Monitoring Plans (VMP) when fishing under the EFP. Each vessel's VMP would outline the catch handling protocols and EM system configurations that the vessel would use while participating in the program. Vessels would not be permitted to fish under the EFP until they hold a NMFS-approved VMP.

NMFS contracted Saltwater Inc., as the EM service provider for this EFP during IFM year 2022. Vessels would be required to use Saltwater Inc., as the EM service provider when fishing under this EFP. The EM service provider would be responsible for developing VMPs for participating vessels. The EM service provider would also be responsible for: Installing, maintaining, and uninstalling EM equipment on participating vessels; reviewing EM video footage; processing and annotating video and sensor data; generating EM data analysis summaries; and working with NMFS personnel to review program performance for refinement.

Given anticipated low fishing effort during IFM year 2022, EM data from 100 percent of EFP trips with fishing effort would get selected for video review in order to learn as much as possible about administering an EM program through this EFP. Because the purpose of EM is to confirm catch retention and trips without fishing effort would have no catch, trips without fishing effort would not get selected for video review. EM video reviewers would identify (presence/absence) and characterize each discard event that occurs on reviewed trips.

Participating vessels would primarily fish with midwater trawl or purse seine gear on declared herring trips; however, some vessels may fish with small-mesh bottom trawl gear under the EFP. Prior to the start of each year, participating vessels would be required to inform the Principal Investigator (PI) and NMFS about which gears they planned to fish with at what points during the year. Participating vessels would also be required to notify the PI and NMFS one month ahead of when they planned to switch gears. Feedback from industry suggests that catch handling protocols remain consistent regardless of whether vessels fish with midwater trawl, purse seine, or small-mesh bottom trawl gear. However, when a vessel switches gears, EM technicians may need to reconfigure the cameras on board to ensure that they can still adequately capture fishing activity. After switching gears, the vessel may not depart on a declared herring trip until the EM service provider has confirmed that the EM system is properly configured and documented in the vessel's VMP.

Allowing vessels to switch gears during the year will incentivize participation in the EFP by allowing vessels flexibility to maximize fishing opportunities. Additionally, allowing participating vessels to fish with purse seine and small-mesh bottom trawl gear would provide NMFS with additional information on the effectiveness of using EM to monitor vessels fishing with these gear types, because the pilot study and the 2021 EFP focused primarily on vessels fishing with midwater trawl gear. Participation in the EFP is

not expected to lead to any shifts in effort that would not otherwise have occurred in the fishery.

Portside Sampling

Prior to any declared herring trip, representatives from vessels with Category A or B permits are required to follow the usual notification process for monitoring coverage. NMFS will notify the vessel representative if a trip is selected for SBRM or IFM coverage. Consistent with the Council-recommended 50-percent IFM coverage target for herring vessels, 50 percent of EFP trips would be selected for coverage. If selected for IFM coverage, participating vessels would be subject to portside sampling on the selected trip in lieu of hiring an at-sea monitor. The purpose of portside sampling is to collect species composition data along with age and length information. If NMFS notifies a participating vessel that a trip has been selected for IFM coverage, that vessel would be required to procure portside sampling services from a NMFS-approved service provider. Consistent with the herring monitoring requirements at § 648.11(m)(1)(iv), the vessel would be prohibited from fishing for, taking, possessing, or landing any herring without procuring portside sampling services for that trip, unless NMFS issued the vessel a coverage waiver for that trip.

When a trip is portside sampled (*i.e.*, selected for IFM coverage or paying for portside sampling in order to fish in a GCA), participating vessels would be required to comply with slippage prohibitions and consequence measures, and they would need to offload their catch at a NMFS-approved sampling station. Sampling station owners would be responsible for maintaining sampling stations according to NMFS safety standards. Portside samplers would complete a safety inspection upon arrival at each sampling station, prior to the start of an offload. If a station failed to meet all of the requirements outlined in the safety inspection checklist, the participating vessel would be issued a one-time waiver by the portside sampler to continue the offload and an explanation of the

safety deficiency refusal. The portside sampler would also report the safety deficiency refusal to NMFS. If the original safety deficiency was not addressed within 48 hours of being reported to NMFS, participating vessels would not be permitted to continue offloading at that location on trips selected for portside sampling until the station had been brought into compliance.

Slippage Requirements

If a participating vessel slipped catch on a trip that was portside sampled, that vessel would be subject to all of the following consequence measures:

- The vessel operator must move at least 15 nautical miles (nm) (27.78 km) from the location of the slippage event before deploying any gear again, and must stay at least 15 nm (27.78 km) away from the slippage event location for the remainder of the fishing trip;
- The vessel operator must complete and sign a Released Catch Affidavit detailing: The vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the estimated weight of each species brought on board or released on that tow. A completed affidavit must be submitted to NMFS within 48 hours of the end of the trip; and
- The vessel operator must report slippage events on the herring daily Vessel Monitoring System catch report and indicate the reason for slipping catch.

Fishing Inside of Groundfish Closed Areas

To comply with the 100-percent monitoring coverage requirement when fishing inside a GCA, participating vessels would be authorized to use EM and portside sampling, in lieu of carrying a human observer, even if not selected for IFM or SBRM coverage. A GCA trip that was portside sampled would not count towards the vessel's realized coverage rate if the trip was not selected for IFM or SBRM coverage. In other words, if a trip was not selected for either coverage type but the vessel elected to pay for

optional portside sampling coverage in order to fish inside a GCA, that trip would not count towards the vessel's realized coverage rate.

Proposed Exemptions

General Exemptions for Participating Vessels

This EFP would exempt participating vessels from the IFM ASM coverage requirements at § 648.11(m)(1)(ii). This exemption would authorize participating vessels to use EM, coupled with portside sampling, to satisfy their IFM coverage requirements in lieu of carrying a human at-sea monitor.

Slippage Exemptions for Participating Vessels Fishing Outside of Groundfish Closed Areas

This EFP would exempt participating vessels from the slippage definition at § 648.2 under the following circumstance: Participating vessels fishing outside of GCAs would be authorized to discard fish sorted at the grate (with the exception of haddock) in view of a camera on trips selected for portside sampling. These discards would not be considered slippage and would not trigger slippage consequence measures, but vessels would still be required to report them as discards. This exemption would not apply when vessels are fishing inside GCAs. When fishing inside GCAs, fish discarded at the grate after sorting would be considered slippage and would trigger slippage consequence measures.

Vessels with observer or ASM coverage may discard fish at the grate after those fish are made available for sampling, and those discards are not considered slippage. However, fish discarded at the grate after sorting are considered slippage on vessels selected for portside sampling. This exemption would resolve operational differences resulting from the slippage definition and help create equity in vessel operations across gear and monitoring types. Feedback from industry suggests that only small quantities of

fish are handpicked at the grate, so it is unlikely that this exemption would result in high volumes of fish being discarded prior to catch being sampled portside.

Observer Exemptions for Participating Vessels Fishing Inside of Groundfish Closed Areas

This EFP would exempt participating vessels from the Northeast multispecies season and area restrictions at § 648.202(b)(1), and from the prohibition against fishing in a Northeast multispecies closed area without an observer on board at § 648.14(r)(2)(v). The EFP would authorize participating vessels to use EM and portside sampling in lieu of carrying a human observer when fishing in a GCA on a trip not selected for SBRM coverage. Purchasing portside sampling coverage to fish in GCAs is expected to be less expensive than purchasing observer coverage to fish in GCAs, so this exemption would provide an incentive for vessels to participate in the EFP. This exemption would also allow NMFS to assess the feasibility of using EM and portside sampling to monitor midwater trawl herring trips fished in GCAs.

Operational Discarding Exemptions for Participating Vessels Fishing Inside of GCAs

This EFP would exempt participating vessels from season and area restrictions at § 648.202(b)(2) and (4) when operationally discarding catch. The EFP would authorize participating vessels to operationally discard catch in GCAs without triggering the consequence measures described at § 648.202(b)(4). Operational discards in the herring fishery are defined as “small amounts of fish that cannot be pumped on board and remain in the codend or seine at the end of pumping operations.” Midwater trawl vessels are permitted to operationally discard outside of GCAs without triggering consequence measures, but not inside GCAs. This exemption would allow participating vessels to maintain operational consistency inside and outside of GCAs. This exemption would also allow NMFS to collect additional information on the frequency of operational discards in GCAs. This exemption would not undermine conservation objectives because

participating vessels would be fully monitored on 100 percent of trips and would be fully accountable for their catch in GCAs.

If approved, minor modifications and extensions to the EFP may be made throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 1, 2022.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

[FR Doc. 2022-04868 Filed: 3/7/2022 8:45 am; Publication Date: 3/8/2022]